IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.04.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL No.626 of 2004
And WAMP.No.1132 OF 2004

UCO Bank
rep. By the Chief Manager
Chennai Main Branch
No.169, Thambu Cheety Street
Chennai 600 001. .. Appellant

vs.

1. M/s. Digboi Refinery
   Indian Oil Corporation Ltd.,
   (Assam Oil Division)
   Assam 786 171.

2.Banking Ombudsman
  Chella Mall, 8th Floor
  11/11A, Sir Theagaraya Road
  T. Nagar, Chennai 600 017. .. Respondents

Writ Appeal filed under Clause 15 of the Letters of Patent against the order of the learned Judge Mr. Justice K.P. Sivasubramaniam, dated 16.12.2003 made in WP.No.12589 of 2000 to issue a writ of Certiorari calling for the records and quashing the Award No.ACD/07/98-99 dated 31.3.99 passed by the 2nd respondent infavour of the 1st respondent and against the petitioner.

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For appellant : Mr. Kasturi Rangan
for M/s. Sampathkumar Assts.

For respondents : Mr. Satish Parasaran for R.1

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JUDGMENT

(Judgement of the Court delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned Single Judge dated 16.12.2003 made in W.P.No.12589 of 2000, UCO Bank, Chennai has filed the above writ appeal.

2. For convenience, we shall refer the parties as arrayed before the learned Single Judge.

3. According to the petitioner Bank, the bank issued Guarantee No.579/94 on 6.12.1994 at the request of M/s.AICAM Engineering Ltd. for Rs.22,61,171.40 favouring Indian Oil Corporation Ltd. towards advance payment and security deposit in relation to contract work of fired heaters for Digboi Refinery Project. This guarantee was originally valid until midnight of 5.12.1995.

4. Similarly, the petitioner issued another guarantee to Indian Oil Corporation Ltd., Assam Oil Division, Digboi on 18.12.1996 bearing No.387/96 for Rs.19,76,368/- against a contract work of erection of equipment machinery fabrication and related civil and structural works for Digboi Reformer Project valid upto the midnight of 7.3.1997.

5. The petitioner bank received two separate letters on 9.3.1998 from the first respondent, calling upon the petitioner bank to extend the guarantees for a further period upto September, 1998 or to treat the same as letters of invocation. Since the claim letters were filed on/lodged with the petitioner after the expiry of both the Guarantees, that is, on 9.3.1998, when the Guarantees were no longer in force and the bank was already released and discharged from all liabilities thereunder irrespective of whether original guarantees were returned or not, the claims were rejected by the petitioner bank and the first respondent was advised accordingly by its letter dated 30.6.1998.

6. The first respondent preferred a complaint with the second respondent/banking Ombudsman claiming deficiency of service on the part of the petitioner bank in not settling the claim filed after expiry of the Guarantees. The second respondent gave an award on 31.3.1999 that the petitioner should pay the amounts under both the guarantees totalling a sum of Rs.35,13,306/- forthwith and also to pay compensation of Rs.5,000/- to the complainant.

7. Aggrieved by the order of the banking Ombudsman, the petitioner filed the writ petition before this Court. By order

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dated 16.12.2003, the learned Judge, after finding no merit in the issue raised for consideration, accepted the decision of the Banking Ombudsman and dismissed the writ petition filed by the bank. Hence, the writ appeal.

8. Heard Mr.Kasturirangan, learned counsel for the appellant/petitioner and Mr.Satish Parasaran, learned counsel for the first respondent, Digboi Refinery, Indian Oil Corporation.

9. The only objection of the petitioner bank is that, as per the terms of bank Guarantees, they should remain in force until the midnight of 5.12.1995 and 7.3.1997 respectively. It is also the case of the petitioner that unless a written claim under the Guarantees were filed before those dates, all rights under the Guarantees should be forfeited and the bank would be released and discharged from all liabilities thereunder. There is no dispute about the same, since, it is specifically incorporated in Clause (vii) of the bank Guarantee for advance and security deposit dated 6.12.1994.

10. It is the stand of the first respondent that all along both the bank and Indian Oil Corporation were relying on postal service for their correspondence in the normal course of action. It is also its claim that the letter was posted about 6 days before the expiry of the Guarantee. In the normal circumstances, posting of letter six days before the expiry of Guarantee is more than the usual time, which the Postal Department in India ordinarily takes in transmitting correspondence entrusted to it. As rightly pointed out by the learned counsel for the first respondent and observed by the learned Judge, there is no specific provision in the bank Guarantee for invocation through telegram, fax, E-mail, personal delivery, etc. and absolutely such conditions are not available in the contract.

11. Again,as rightly observed by the learned Judge, delivering correspondence through post office has not been excluded. In fact from 1994 till 31.3.1999, both the petitioner and the first respondent were corresponding with each other through postal service. This is evident from various bank letters which are available in the typed-set of papers filed by the petitioner Bank. Though the counsel for the petitioner bank heavily relied on the words in the bank Guarantee that a written claim should be filed within the date and time prescribed, as rightly pointed out by the learned Judge, there is no specific methodology provided for seeking extension. We are also of the view that the word, "filed" found in the bank Guarantee does not mean that it should be physically presented before the bank. We have already referred the assertion of the first respondent that it sent the claim for extension six days ahead of the last day. In the absence of any specific exclusion in the bank Guarantee

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namely, correspondence through post office, the method adopted/followed by the first respondent cannot be faulted with. There is no reason for not treating the Post Office as an agent of the petitioner bank.

12. Taking note of the fact that from the date of bank Guarantee viz., 1994 and upto the date of filing the claim petition, the parties were corresponding through Post Office, which is an accepted mode of service and also of the fact that the first respondent made a claim for extension of bank Guarantee six clear days ahead of the expiry date through Post Office, we are unable to accept the stand taken by the petitioner bank. In view of the factual details, we are of the view that the decisions relied on by the learned counsel viz., (a) *Annada Prasad v. State (AIR 1989 Orissa 130)*, (b) *I.T.Commr. v. M/s.Ogale Glass Works Ltd (AIR 1954 SC 429)*, (c) *I.T.Commr. v. Patney & Co. (AIR 1959 SC 1070)*, and (d) *Harbhagwan v. P. & P. Financiers (AIR 1969 Punjab and Haryana 340)* are not helpful to the case on hand. Further, as stated earlier, there is no provision to the effect that the request for renewal should be made in person and in view of the conduct of the Bank recognising the correspondence through Post Office and taking note of the fact that the first respondent made request for renewal six days prior to the expiry date, we concur with the stand taken by the first respondent and the conclusion arrived at by the learned Single Judge and reject the stand taken by the petitioner/appellant.

In these circumstances, we do not find any error or infirmity or valid ground for interference in the order of the learned Judge. Consequently, the writ appeal fails and the same is dismissed. No costs. Connected WAMP., is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To
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   Indian Oil Corporation Ltd.,
   (Assam Oil Division)
   Assam 786 171.

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3. The Chief Manager
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+1cc to Mr.Satish Parasaran, Advocate Sr 22514

SSV (CO)
km/16.4.

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